IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR
&
THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

THURSDAY, THE 11TH OCTOBER 2007 / 19TH ASWINA 1929

WP(C).No. 8055 of 2004(S)

OA.1107/2001 OF CENTRAL ADMINISTRATIVE TRIBUNAL,ERNAKULAM BENCH.
.....

PETITIONERS:
----

1. **UNION OF INDIA, REPRESENTED BY THE GENERAL MANAGER, SOUTHERN RAILWAY, HEADQUARTERS OFFICE, PART TOWN P.O., CHENNAI-3.**

2. **THE CHIEF PERSONNEL OFFICER, SOUTHERN RAILWAY, HEADQUARTERS OFFICE, PARK TOWN P.O., CHENNAI-3.**

3. **THE CHEIF COMMUNICATION ENGINEER, SOUTHERN RAILWAY, HEADQUARTERS OFFICE, PARK TOWN P.O., CHENNAI-3.**

4. **THE SENIOR DIVISIONAL PERSONNEL OFFICER SOUTHERN RAILWAY, PALGHAT DIVISION, PALGHAT.**

5. **THE CHIEF SIGNAL & TELECOMMUNICATION ENGINEER, SOUTHERN RAILWAY, HEADQUARTERS OFFICE, PART TOWN P.O., CHENNAI-3.**

6. **THE SENIOR SECTION ENGINEER, TELECOMMUNICATION, SOUTHERN RAILWAY, ERODE RAILWAY STATION, ERODE.**

BY ADV. SRI.K.P.DANDAPANI.

W.P.(C). NO.8055/2004:

RESPONDENT:

R. KOMALA DEVI, W/O. LATE RASUMANI,
DOOR NO.84/6002, UPSTARIS OF ERODE CO-OP. BANK,
SATHY MAIN ROAD, KAVINDAPADI,
ERODE DISTRICT-638 455.

BY ADV. SRI.T.C.GOVINDA SWAMY,
ADV. SRI.K.M.ANTHRU,
ADV. SRI.MARTIN G.THOTTAN,
ADV. SRI.MANNATIL KUMAR,
ADV. SMT.D.HEERA.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 11/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C). NO.8055/2004-S:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P.1: COPY OF THE O.A. NO. 1107/2001 DTD. 20/12/2001 FILED BY THE RESPONDENT BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKULAM ALONG WITH ITS ANNEXURES.

EXT.P.2: COPY OF THE REPLY STATEMENT DTD. 5TH JULY 2002 FILED ON BEHALF OF THE PETITIONERS BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKULAM IN O.A. NO. 1107/2001.

EXT.P.3: COPY OF THE REJOINDER DTD. 11/01/2003 FILED BY THE RESPONDENT BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKULAM IN O.A. NO. 1107/2001.

EXT.P.4: COPY OF THE ADDITIONAL REPLY STATEMENT DTD. 6TH AUGUST 2003 FILED BY THE PETITIONERS BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKULAM IN O.A. NO. 1107/2001.

EXT.P.5: COPY OF THE ORDER DTD. 12/08/2003 IN O.A. NO. 1107/2001 OF THE CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKULAM.

RESPONDENT'S EXHIBITS:

EXT.R1.A: COPY OF THE OFFICE ORDER NO. J/SG 22/2004 DTD. 02/05/2004 ISSUED BY THE FOURTH WRIT PETITIONER.

EXT.R1.B: COPY OF THE LETTER NO. J/P/CON/CGA/39/2000 DTD. 13/05/2004 ISSUED ON BEHALF OF THE FOURTH WRIT PETITIONER.

//TRUE COPY//

prv.

K.BALAKRISHNAN NAIR &

T.R.RAMACHANDRAN NAIR, JJ.

W.P.(C) NO. 8055 OF 2004-S

Dated 11th October, 2007.

JUDGMENT

Balakrishnan Nair, J.

The petitioners are the respondents in O.A.No.1107/2001 on the files of the Central Administrative Tribunal, Ernakulam Bench. The respondent was the applicant.

2. The brief facts of the case are the following: The applicant, who is the respondent herein, is the widow of a Railway employee, late Mr.Rasumani. He applied for voluntary retirement under the Railway Services (Pension) Rules, 1993, on 14.2.2000. He was to be relieved on 30.4.2000 in accordance with the said application. But, he submitted an application on 15.4.2000 before his immediate superior, seeking to withdraw the said application. The same reached the office of the competent authority on 8.5.2000. In the meantime the employee died on 5.5.2000. Annexure-A1 is the application for voluntary retirement and Annexure-A2 is the application for withdrawing the same. After the death

of the employee, the applicant was served with Annexure-A5 order dated 31.7.2000, accepting the application of the employee for voluntary retirement. In the meantime, the applicant submitted Annexure-A3 representation dated 22.6.2000, claiming appointment under the dying-in-harness scheme. The said application was rejected by Annexure-A6 communication dated 20.09.2001. The O.A was filed challenging Annexures A5 and A6. Copy of the said O.A is Ext.P1. The petitioners herein, the respondents before the C.A.T filed a detailed counter affidavit, resisting the prayers in the O.A. According to them, Annexure-R1 is the application for voluntary retirement submitted by the employee and Annexure-R2 is the withdrawal application. There is considerable difference between the signatures in those two applications. Further the date of Annexure-A1 is 10.2.2000, whereas the date of Ext.R1 is 14.2.2000. The stand of the Railways was that the applicant with the help of the local officers of the Railways, filed a pre-dated withdrawal application, which reached the competent authority only on 8.5.2000, after the death of the employee on 5.5.2000. The application for voluntary retirement was considered at all levels properly and finally, it was accepted by Annexure-A5. The applicant's claim for employment on compassionate ground was rejected rightly by Annexure-A6. Therefore, they prayed for dismissal of the

O.A. The reply statement of the respondents in the O.A is Ext.P2. The applicant filed a rejoinder, copy of which is produced as Ext.P3. The Railways filed Ext.P4 additional reply. After hearing both sides, the Tribunal by Ext.P5 order, set aside Annexures-A5 and A6, produced along with Ext.P1 O.A and it was declared that the applicant's husband continued in service up to 5.5.2000, the date of his death. It was ordered to settle his terminal dues accordingly and also to consider the claim of the applicant for employment assistance on compassionate ground. This writ petition was filed, challenging Ext.P5.

3. The petitioners attack the reasoning of the Tribunal as also the findings entered in Ext.P5. The contentions raised in Ext.P2 reply statement were reiterated before this Court. We also heard the learned counsel appearing for the respondent applicant.

4. We feel that the conclusions of the Tribunal and the decision to set aside Annexures-A5 and A6 should be upheld. The application was admittedly submitted under Rule 67 of the Railway Services (Pension) Rules, 1993. Normally, the period of notice for voluntary retirement is three months. In this case, the application for V.R.S was submitted on 14.2.2000 and it was to take effect on 30.4.2000. In such cases, there should be a specific order by the competent authority, waiving the requirement of three

months' notice and accepting the application for retirement. The relevant portion of the said Rule reads as follows:

> "67. Retirement on completion of 20 years qualifying service:--
>
> (1) .....
>
> (3)(a) A railway servant referred to in sub-rule (1) may, make a request in writing to the appointing authority to accept notice of voluntary retirement of less than three months giving reasons therefor;
>
> (b) On receipt of a request under clause (a), the appointing authority subject to the provisions of sub-rule (2), may consider such request for the curtailment of the period of notice of three months on merits and if it is satisfied that the curtailment of the period of notice will not cause any administrative inconvenience, the appointing authority may relax the requirement of notice of three months on the condition that the railway servant shall not apply for commutation of a part of his pension before the expiry of the period of notice of three months.
>
> (4) A railway servant, who has elected to retire under this rule and has given the necessary notice to that effect to the appointing authority, shall be precluded from withdrawing his notice except with the specific approval of such authority."

In this case certain facts are not disputed, that is, the employee died on 5.5.2000 before a decision on his application was taken and communicated. It is common case that Annexure-A5 was communicated only on 31.7.2000. An order passed in the chambers of the competent authority takes effect

only when it is sent to the person affected. In other words, it should go out of the control of the author of the order. Only then the order will take effect. It need not necessarily be served on the person concerned. In this case, the decision on the application for voluntary retirement submitted by the incumbent was communicated only on 31.7.2000. The date of that order is 31.7.2000. Long before that, the employee died on 5.5.2000. After his death, the application for V.R.S submitted by him was void and non est. No decision could have been taken on the application of a dead man for voluntary retirement. So, the applicant's husband should be treated as a person who died in harness and therefore, the legal heirs are entitled to get the usual general benefits available in such cases in accordance with law. Therefore, we find nothing illegal with the order of the Tribunal. Accordingly, the challenge against Ext.P5 is repelled and the writ petition is dismissed.

K.BALAKRISHNAN NAIR, JUDGE.

T.R.RAMACHANDRAN NAIR, JUDGE.

Nm/